event of such business becoming illegal. As was said in Gaston *v.* Gordon, 208 Mass. 265, at page 269, 94 N. E. 307, at page 309:

"'But by the express terms of the lease rent would still have been due. The inference is unavoidable that if it had been intended to make this whole instrument dependent upon the granting of a license to the lessee, a clause to that end would not have been omitted. The lessee has bound himself in unmistakable language to pay the rent without any qualification dependent upon his failure to obtain the necessary authority from public officers. Although this mischance renders it impossible for him to make the valuable use of the property which was contemplated, that was a contingency which ought to have been foreseen, and some anticipatory provision of partial or entire exoneration from liability inserted in the lease if such was the intention of the parties.'

"We are unable to perceive any distinction in principle between the facts in the case last cited and those in the case at bar. The inability of the defendant to carry on the liquor business because of the prohibition contained in the federal amendment cannot relieve him from his contract, any more than he would be so exonerated in the event that the vote of the city had been against the sale of intoxicating liquors, or the licensing board had refused to grant him a license to be exercised on the leased premises. The sale of intoxicating liquors is well known to be a subject of regulation, restriction and prohibition by statute and by constitutional amendment. If the defendant desired to have protected himself from liability to pay rent, a clause for that purpose should have been inserted in the lease. He seeks to invoke the familiar rule that a contract which cannot be performed without violating the law is void. This is a good rule of law, but it is not applicable to the present case. It is well settled that a tenant is liable for rent in the absence of stipulation if a building upon leased premises is destroyed by fire. Davis *v.* Alden, 2 Gray, 309; Roberts *v.* Lynn Ice Co., 187 Mass. 402, 73 N. E. 523. We cannot doubt that the defendant is liable upon his covenant to pay rent, notwithstanding the adoption and ratification of the Eighteenth Amendment during the term of the lease. Taylor *v.* Finnigan, 189 Mass. 568, 76 N. E. 203, 2 L. R. A. (N. S.) 973; Gaston *v.* Gordon, supra; Robbins *v.* McCabe, 239 Mass. 275, 131 N. E. 799; Goodrum Tobacco Co. *v.* Potts-Thompson Liquor Co., 133 Ga. 776, 66 S. E. 1081, 26 L. R. A. (N. S.) 498; Houtson Ice & Brewing Co. *v.* Keenan, 99 Tex. 79, 88 S. W. 197."

Lost Property—Rights of Finder of Treasure Trove.—In Vickery *v.* Hardin, 133 N. E. 922, the Appellate Court of Indiana held that where a workman, while excavating for a cellar under an old house, discovered about five inches below the surface, an earthen jar containing $1,325 in gold, he was entitled thereto as "treasure trove", as against the owner of the land and as against the heirs of one supposed to have secreted the treasure.

The court said in part: "The question here presented involves the

law of treasure trove, which is defined as any gold or silver, in coin or bullion, found concealed in the earth or in a house or other private place, but not lying on the ground, the owner of the treasure being unknown. The rule as to such property in this country, in the absence of legislation, is that the title belongs to the finder as against all the world except the true owner, the principle being the same as to lost property. Weeks *v.* Hackett, 104 Me. 264, 71 Atl. 858, 19 L. R. A. (N. S.) 1201, 129 Am. St. Rep. 390, 15 Ann. Cas. 1156; Danielson *v.* Roberts, 44 Or. 108, 74 Pac. 913, 65 L. R. A. 526, 102 Am. St. Rep. 627. The owner of the soil in which treasure trove is found acquires no title thereto by virtue of his ownership of the soil. Weeks *v.* Hackett, supra; note, 15 Ann. Cas. 1156; 19 L. R. A. (N. S.) 1201; 17 R. C. L. 1200; Bowen *v.* Sullivan, 62 Ind. 281, 30 Am. Rep. 172; Williams *v.* State, 165. Ind. 475, 75 N. E. 875, 2 L. R. A. (N. S.) 248."

Tax on Income of Person Employing Child Labor Unconstitutional. —In Bailey *v.* Drexel Furniture Co., 42 Sup. Ct. 449, it was held that, The Child Labor Tax Law (Act Feb. 24, 1919, tit. 12, § 1200 et seq. [Comp. St. Ann. Supp. 1919, §§ 6336 7/8a to 6336 7/8h]), imposing a tax of 10 per cent. of the net income on a person employing child labor, which was designed to regulate child labor and not to collect revenue, as is manifest from its provisions, cannot be sustained as a valid exercise of the taxing power under Const. art. 1, § 8, merely because what was in substance a penalty for violatior of the regulations was designated as a tax, even though the court will sustain as a taxing measure an act which imposes a tax so exclusive as to prevent the act taxed.

Mr. Chief Justice Taft who delivered the opinion of the court said in part:

"Out of a proper respect for the acts of a co-ordinate branch of the government, this court has gone far to sustain taxing acts as such, even though there has been ground for suspecting, from the weight of the tax, it was intended to destroy its subject. But in the act before us the presumption of validity cannot prevail, because the proof of the contrary is found on the very face of its provisions. Grant the validity of this law, and all that Congress would need to do, hereafter, in seeking to take over to its control any one of the great number of subjects of public interest, jurisdiction of which the states have never parted with, and which are reserved to them by the Tenth Amendment, would be to enact a detailed measure of complete regulation of the subject and enforce it by a so-called tax upon departures from it. To give such magic to the word 'tax' would be to break down all constitutional limitation of the powers of Congress and completely wipe out the sovereignty of the States.

"The difference between a tax and a penalty is sometimes difficult to define, and yet the consequences of the distinction in the required method of their collection often are important. Where the sovereign enacting the law has power to impose both tax and penalty, the differ-